

No. 12677

United States
Court of Appeals
for the Ninth Circuit.

KAM KOON WAN, on His Own Behalf and on
Behalf of All Other Persons and Employees
of Defendant Who Are Similarly Situated,

Appellant,
vs.

E. E. BLACK, LTD., A Hawaiian Corporation,

Appellee.

SUPPLEMENTAL
Transcript of Record

Appeal from the United States District Court,
Territory of Hawaii.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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In The United States District Court
for the Territory of Hawaii

Civil No. 672

KAM KOON WAN, on His Own Behalf and on
Behalf of All Other Persons and Employees of
Defendant Who Are Similarly Situated,

Plaintiffs,

vs.

E. E. BLACK, LTD., a Hawaiian Corporation,
Defendant.

MOTION FOR LEAVE TO AMEND
COMPLAINT

Comes now Kam Koon Wan, on his own behalf and on behalf of all other persons and employees of defendant who are similarly situated, by his attorney, Samuel Landau, and moves this Court for leave to amend Paragraphs III and VI of the complaint by including further allegations of jurisdiction so that the said complaint, as amended, will read as follows:

“AMENDED COMPLAINT

I.

Plaintiffs and each of them bring this action on behalf of themselves and on behalf of all other persons and employees similarly situated. Plaintiffs and said other persons and employees are herein-after collectively and individually referred to as ‘plaintiffs.’

II.

Plaintiffs bring this action to recover from defendant unpaid overtime compensation and an additional equal amount of liquidated damages, pursuant to section 16 (b) of the Fair Labor Standards Act of 1938 (pub. No. 718, 76th Cong.; 52 Stat. 1060), hereinafter referred to as the Act.

III.

Jurisdiction is conferred on the court by section 41 (8), 28 U.S.C.A. (Judicial Code) 24, giving the District Court original jurisdiction 'of all suits and proceedings arising under any law regulating commerce,' and by section 16 (b) of the Act. Jurisdiction is also conferred on this court by Public Law 49, 80th Congress, Chapter 52, Paragraph 2, 61 Stat. 85; 29 U.S.C.A., Paragraph 252.

IV.

On the dates and during all of the times herein mentioned the defendant E. E. Black, Ltd., was and now is a corporation organized and doing business under the laws of the Territory of Hawaii, having its principal office and place of business at City and County of Honolulu, Territory of Hawaii.

V.

During all the times mentioned the defendant was engaged in a general construction business under contract with private individuals, City and County of Honolulu, the Territory of Hawaii, the United States or some department thereof.

During the six-year period next preceding the

filng of this action, plaintiffs were employed by the defendant and during every week of the said em-
ployment with the defendant, plaintiffs were em-
ployed and engaged by the defendant in work
necessary to interstate commerce pursuant to the
contract above mentioned.

VI.

In such business and during the six-year period next preceding the commencement of this action defendant employed plaintiffs in the following operations and capacities.

- (1) Transportation of building materials assembling, stacking and delivering to job sites, installing and erecting materials.
- (2) Repair, maintenance and new construction, including machinists, mechanics, welders, bricklayers, masons, carpenters of all kinds, blacksmith, steel workers, oilers, electricians, watchmen, painters, plumbers, road maintenance cantoneers, road construction workers, power shovel operators and scraper operators.
- (3) General clerical employees, warehousemen, timekeepers, surveyors, engineers, research workers, draftsmen and other operations and capacities.

The said operations and capacities performed by plaintiffs were an essential part of the work nec-
essary to complete the work to be performed in the
contract herein above mentioned and are operations
and functions necessary thereto.

All of said activities engaged in by the plaintiffs

were compensable by a provision of a contract in effect at the time of such activities between plaintiffs and defendant, in that defendant agreed to pay each of the plaintiffs a stipulated sum per hour for work performed for defendant, which was the regular rate of pay, and that in fact plaintiffs performed the work and the defendant did pay the regular rate. The activities in which plaintiffs were engaged were performed during that portion of the day with respect to which they were made compensable.

VII.

During the six-year period next preceding the commencement of this action defendant employed plaintiffs for work weeks in excess of forty-two hours prior to October 24, 1940, and for work weeks in excess of forty hours after October 24, 1940, without paying them the overtime compensation required by the Act for such employment during such work weeks. Specifically;

(a) The defendant failed and refused to pay overtime compensation required by the Act for hours worked during each work week in excess of forty-two prior to October 24, 1940, and in excess of forty hours worked during each work week subsequent to October 24, 1940, to those employees engaged in the operations described in sub-divisions 1, 2, and 3 of Paragraph VI above.

VIII.

The exact number of work weeks so worked by plaintiffs, the exact number of hours worked during

such weeks by plaintiffs, the types of work performed by plaintiffs were under-paid by defendant, are unknown to plaintiffs, but said exact number of work weeks, hours, wages and types of work performed by plaintiffs, and consequently the exact amounts by which plaintiffs were under-paid by defendant are known to defendant by virtue of the fact that defendant, during such period made, kept and preserved and now possess books, records and accounts of the wages and hours of plaintiffs' employment, as required by section 11 (c) of the Act.

Wherefore, plaintiffs pray that defendant be required to make known to plaintiffs the exact number of hours which plaintiffs and each of them are shown by defendant's records to have worked in each work week during the six-year period next preceding the commencement of this action, the hourly wage rate paid for such hours worked, the type of work performed by plaintiffs during such period and the overtime pay, if any, paid to plaintiffs during said period.

Plaintiffs further pray that judgment be awarded each of them for unpaid overtime compensation and for an additional equal amount as liquidated damages, together with costs and that the court allow a reasonable attorney's fee to be paid by the defendant."

This motion is made for the reason that Section 2 (d) of the Portal to Portal Act of 1947 (29 U.S.C.A., Paragraph 252) limits the jurisdiction of this court to actions under the Fair Labor Standards Act of 1938 for overtime compensation, which

seek to enforce liability with respect to an activity which is compensable under subsections (a) and (b) of Section 2 of said Act. 29 U.S.C.A., Paragraph 252.

Dated: Honolulu, T. H., this 23rd day of June, 1950.

/s/ SAMUEL LANDAU,
Attorney for Plaintiffs.

Consented To:

E. E. BLACK, LTD.
By ROBERTSON, CASTLE &
ANTHONY

By /s/ J. GARNER ANTHONY,
Its Attorneys.

ORDER

It is hereby ordered that the Motion for Leave to Amend Complaint is hereby granted and that the complaint, as amended, shall read as shown in said Motion.

Dated: Honolulu, T. H., this 23rd day of June, 1950,

/s/ J. FRANK McLAUGHLIN
District Judge.

[Endorsed]: Filed June 23, 1950.

[Endorsed]: No. 12677. United States Court of Appeals for the Ninth Circuit. Kam Koon Wan, on his own behalf and on behalf of all other persons and employees of defendant who are similarly situated, Appellant, vs. E. E. Black, Ltd., a Hawaiian Corporation, Appellee. Supplemental Transcript of Record. Appeal from the United States District Court for the Territory of Hawaii.

Filed September 8, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the Ninth Circuit.

